

LBR 4001-1. STAY OF 11 U.S.C. § 362

- (a) **General.** Except as provided by this rule, the requirements of LBR 9013-1 through LBR 9013-4 apply to a motion for relief from the automatic stay, extension of the stay, imposition of the stay, or confirmation that the stay is terminated or no longer in effect. If the motion is filed in a chapter 13 case, the moving party must also comply with LBR 3015-1(r).
- (b) **Form.**
- (1) **Motions.** An entity seeking relief from the automatic stay, extension of the stay, imposition of the stay, or confirmation that the stay is terminated or no longer in effect, must file a motion using the court-mandated F 4001-1 series of form motions. The failure to use the mandatory forms may result in the denial of the motion or the imposition of sanctions.
 - (2) **Orders.** In addition to the requirement that all orders on § 362 motions comply with LBR 9021-1:
 - (A) **Mandatory Form Orders.** Any order granting relief from the automatic stay, extension of the stay, imposition of the stay, or confirming that the stay is terminated or no longer in effect, must be lodged using the court-mandated F 4001-1 series of form orders. The failure to use the mandatory form orders may result in the court not signing or entering the order; and
 - (B) **Motions Settled by Stipulation.** Any order granting a motion regarding the stay, as settled by stipulation, must be prepared using the court-mandated F 4001-1 series of form orders and is exempt from the requirements of LBR 9021-1(b)(2). Compliance with the CM/ECF Procedures and Court Manual is required regarding signatures of parties and/or counsel to the stipulated terms.
- (c) **Motion for Relief from Automatic Stay.**
- (1) **Filing and Service.** The motion, notice of hearing, and all supporting papers must be served by the moving party in the time and manner prescribed in LBR 9013-1 on the following parties:
 - (A) **Residential Unlawful Detainer Motions.** If the motion seeks relief from the stay to proceed with an unlawful detainer action involving a residential property with a month-to-month tenancy, tenancy at will, or a tenancy terminated by an unlawful detainer judgment, the movant must serve only the debtor and debtor's attorney (if any).
 - (B) **Other Relief from Automatic Stay Motions.** In all other cases, the movant must serve:
 - (i) The debtor and debtor's attorney (if any);

- (ii) The trustee or interim trustee (if any);
 - (iii) Any applicable codebtor where relief is sought from the codebtor stay under 11 U.S.C. §§ 1201 or 1301;
 - (iv) If relief is sought as to property of the estate, the holder of a lien or encumbrance against the subject property that is known to the movant, scheduled by the debtor, or appears in the public record; and
 - (v) Any other party entitled to notice under FRBP 4001.
 - (2) Hearing. Unless the court orders otherwise at the time of the hearing, the preliminary hearing under 11 U.S.C. § 362(e) is consolidated with the final hearing under 11 U.S.C. § 362(d).
 - (3) Continuance By Stipulation. A stipulation by the moving party to continue a hearing under 11 U.S.C. § 362(d) to a later date is deemed a waiver of the applicable portions of 11 U.S.C. § 362(e) until the conclusion of the hearing on such later date. Unless otherwise ordered, an order by the court to continue a hearing under 11 U.S.C. § 362 to a later date is deemed to include an order continuing the stay in effect until the conclusion of the hearing on such later date.
 - (4) Separate Motion. A motion for relief from the automatic stay must be filed separately from, and not combined in the same pleading with, any other request for relief, unless otherwise ordered by the court.
- (d) Motion for Extension or Imposition of Stay.**
- (1) An entity seeking an extension of the stay under 11 U.S.C. § 362(c)(3)(B) or imposition of the stay under 11 U.S.C. § 362(c)(4)(B) must file a motion and serve the motion, notice of hearing, and supporting papers as provided in subsection (c)(1) of this rule and upon all other parties in interest against whom extension or imposition of the stay is sought.
 - (2) The motion must be filed promptly after the petition date to be timely considered and, if necessary, accompanied by a separate motion under LBR 9075-1(b) for a hearing on shortened notice.
- (e) Motion for Order Confirming Termination of Automatic Stay.**
- (1) An entity requesting an order under 11 U.S.C. § 362(j) confirming termination of the automatic stay must file a motion supported by a declaration containing competent evidence establishing that the stay has terminated or was never in effect under 11 U.S.C. § 362(c).
 - (2) The motion and supporting declaration must be served as provided in subsection (c)(1) of this rule.

(f) **Deposit of Rent under 11 U.S.C. § 362(l).**

- (1) Any rent deposited with the clerk of the court pursuant to 11 U.S.C. § 362(l)(1)(B) must be in the form of a certified or cashier's check or money order payable to the lessor or landlord in the amount of any rent that would become due during the 30-day period after the filing of the bankruptcy petition.
- (2) The rent must be deposited with the clerk of the court at the time the bankruptcy petition is filed. The rent deposit and the bankruptcy petition must be accompanied by a copy of the judgment for possession.
- (3) As the certification to be filed and served pursuant to 11 U.S.C. § 362(l)(2), debtor may use the court-approved form F 4001-1.2, Debtor's Further Certification of Cure of Monetary Default Underlying Judgment for Possession of Residential Property and Proof of Deposit (11 U.S.C. § 362(l)(2)). This certification must be filed and served within 30 days after the filing of the bankruptcy petition in accordance with 11 U.S.C. § 362(l)(2).
- (4) Pursuant to 11 U.S.C. § 362(l)(5)(D), the clerk will transmit the payment to the lessor at the address listed in the section on page 2 of the bankruptcy petition entitled "Statement by a Debtor Who Resides as a Tenant of Residential Property."

- (g) **Relief from Automatic Stay to Proceed in Another Forum.** If the court grants a motion to lift the automatic stay and to proceed in another forum, the prevailing party must promptly file a copy of the entered order in that forum.

LBR 4001-2. CASH COLLATERAL AND FINANCING ORDERS

- (a) **General.** The requirements of LBR 9013-1 through LBR 9013-4 apply to a motion to obtain credit or to approve the use of cash collateral, debtor in possession financing, and/or cash management under 11 U.S.C. §§ 363 or 364 (collectively, "Financing Motion"), except as provided by this rule.
- (b) **Provisions to be Identified.** To the extent not otherwise required by FRBP 4001(b)(1)(B) and (c)(1)(B), a Financing Motion must identify whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision that:
- (1) Grants cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (*i.e.*, clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);
 - (2) Binds the estate or all parties in interest with respect to the validity, perfection, or amount of the secured creditor's prepetition lien or debt or the waiver of claims against the secured creditor;
 - (3) Waives or limits the estate's rights under 11 U.S.C. § 506(c);

- (4) Grants to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, or 549;
- (5) Deems prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);
- (6) Provides disparate treatment for the professionals retained by a creditors' committee from that provided for the professionals retained by the debtor with respect to a professional fee carve out; or
- (7) Primes any secured lien. If an order is sought to prime a lien, the Financing Motion must:
 - (A) Identify the location of any such provision in the proposed form of order, cash collateral stipulation, and/or loan agreement; and
 - (B) Contain specific justification for the priming of the lien.
- (c) **Summary of Essential Terms.** The Financing Motion must include a summary of the essential terms of the proposed credit, use of cash collateral, or debtor in possession financing (*e.g.*, the interim borrowing limit, the maximum borrowing available on a final basis, borrowing conditions, interest rate, maturity dates, events of default, use of funds limitations, and protections afforded under 11 U.S.C. §§ 363 and 364).
- (d) **Use of Form for Cash Collateral and/or Debtor in Possession Financing Stipulations.** Each Financing Motion requesting approval of a stipulation for credit, use of cash collateral, or debtor in possession financing must be accompanied by court-approved form F 4001-2, Statement Pursuant to Local Bankruptcy Rule 4001-2, or a statement consistent with court-approved form F 4001-2.
- (e) **Interim Relief.** The court may grant interim relief to prevent immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the court will not approve an interim order that includes any of the provisions described in subsection (b)(1)-(7) of this rule.
- (f) **Final Orders.** A final order will be entered only after notice and a hearing pursuant to FRBP 4001(b). Ordinarily, the final hearing will be held at least 14 days after the appointment of the creditors' committee contemplated by 11 U.S.C. § 1102.

LBR 4003-2. LIEN AVOIDANCE

- (a) **General.** The requirements of LBR 9013-1 through LBR 9013-4 apply to a motion to avoid a lien or other transfer of property pursuant to 11 U.S.C. § 522(f), except as provided by this rule.
 - (1) A motion to avoid a lien or other transfer of property under 11 U.S.C. § 522(f) may be brought under either LBR 9013-1(a) or LBR 9013-1(o).

- (2) A motion to sell property free and clear of liens under 11 U.S.C. § 363(h) does not constitute a “proceeding to avoid a lien” within the meaning of this rule.

(b) Form.

- (1) The creditor whose lien is to be avoided must be identified in the title or caption of the notice and motion (*e.g.*, Motion to Avoid Lien of XYZ Co. under 11 U.S.C. § 522(f)). The notice and motion must contain a single caption and be filed in the underlying bankruptcy case. A double caption must not be used nor will a separate reference number be assigned.
- (2) If the motion seeks to avoid a lien on real property, the motion and proposed order must include the legal description of the real property.

(c) Service.

- (1) The motion, notice, and supporting papers must be served on the holder of the lien to be avoided in the same manner as a summons and complaint under FRBP 7004.
- (2) The motion, notice, and supporting papers also must be served on any other holder of a lien or encumbrance against the subject property.

(d) Evidence. The motion must be accompanied by a declaration or other competent evidence establishing:

- (1) The balance remaining on the creditor’s loan;
- (2) The fair market value of the subject property;
- (3) The identity of any other holder of a lien encumbering the subject property and the amount due and owing on such lien;
- (4) The specific statutory authority for the claimed exemption; and
- (5) The value or amount claimed exempt.

LBR 4008-1. REAFFIRMATION AGREEMENTS

- (a) **Form.** A reaffirmation agreement must conform to Official Form 240A-Reaffirmation Agreement. If the reaffirmation agreement concerns a secured debt, a complete and legible copy of the security agreement, including the front and back of each page, must be attached.
- (b) **Reaffirmation without Representation or Certification by Debtor’s Attorney.** In a case where the debtor is not represented by an attorney, or where the attorney is unwilling or unable to sign Part C: Certification by Debtor’s Attorney, the debtor must move for approval of the reaffirmation agreement by the court by completing Part E: Motion for Court Approval of Official Form 240A.

- (c) **Deadline for Filing.** A reaffirmation agreement and a motion for approval of the reaffirmation agreement under 11 U.S.C. § 524 must be filed by the debtor or creditor within 60 days following the conclusion of the first meeting of creditors under 11 U.S.C. § 341(a), unless otherwise ordered by the court.
- (d) **Hearing and Approval by Court.**
- (1) The clerk will set a hearing on the motion for approval of the reaffirmation agreement and give notice to the debtor and creditor of the date, time, and place of such hearing if:
 - (A) The debtor was not represented by an attorney or the attorney representing the debtor was unwilling or unable to sign Part C: Certification by Debtor's Attorney; or
 - (B) Where a presumption of undue hardship arising under 11 U.S.C. § 524(m)(1) is not rebutted by the debtor to the satisfaction of the court.
 - (2) The court will not grant a motion to approve a reaffirmation agreement unless the debtor appears in person at the hearing to respond to questions by the court.
 - (3) Under all other circumstances, unless otherwise ordered by the court, court approval is not required in a case where the debtor was represented by an attorney during the negotiation of the reaffirmation agreement.